

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

HB 2255 - SB 2527

February 27, 2018

SUMMARY OF BILL: Enhances rape to aggravated rape if the rape was committed during the commission of an aggravated burglary, the rape was committed against more than one person in a single incident, the defendant was aided or abetted by one or more persons, or the victim was mentally defective, mentally incapacitated, or physically helpless.

Enhances sexual battery to aggravated sexual battery if the rape was committed during the commission of an aggravated burglary or against more than one person in a single incident.

ESTIMATED FISCAL IMPACT:

On February 24, 2018, a fiscal note was issued for this bill with the following estimated fiscal impact:

*Increase State Expenditures – \$386,600 Incarceration**

Upon further review, this impact was in error. As a result, a corrected fiscal note is being issued. The corrected fiscal impact for the bill is estimated as follows:

(CORRECTED)

Increase State Expenditures – \$809,200 Incarceration*

Corrected assumptions:

- Tennessee Code Annotated § 39-13-505 prohibits the unlawful sexual contact with a victim by the defendant or the defendant by the victim under certain circumstances. Sexual battery is a class E felony.
- The proposed legislation enhances sexual battery to aggravated sexual battery, a class B felony, if the sexual battery was committed during the commission of an aggravated burglary or against more than one person in a single incident.
- Statistics from the Department of Correction (DOC) show an average of 45 admissions per year over the last 10 years for sexual battery. It is assumed that five percent, or two admissions ($45 \times 0.05 = 2.25$), will be enhanced under the proposed legislation.
- Population growth will not impact these admissions.
- According to the DOC, the average operating cost per offender per day for calendar year

HB 2255 - SB 2527 (CORRECTED)

2018 is \$71.08.

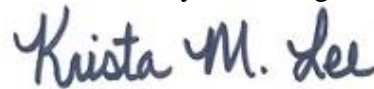
- Statistics from the DOC show the average time served for sexual battery is 1.41 years and the average time served for aggravated sexual battery is 8.16 years. The proposed legislation will result in each offender serving an additional 6.75 years ($8.16 - 1.41$).
- According to the DOC, 47.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($2 \text{ offenders} \times .471 = 0.942 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender (2 offenders – 1 recidivism discount) serving an additional 6.75 years (2,465.44 days) at a cost of \$175,243 ($\$71.08 \times 2,465.44 \text{ days}$).
- Tennessee Code Annotated § 39-13-502(a) prohibits the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim accompanied by any of the following circumstances:
 - 1) Force or coercion is used to accomplish the act;
 - 2) The defendant causes bodily injury to the victim;
 - 3) The defendant is aided or abetted by one or more persons and:
 - a. Force or coercion is used to accomplish the act; or
 - b. The defendant knows or has reason to know the victim is mentally defective, mentally incapacitated, or physically helpless.
- Aggravated rape is a class A felony.
- The proposed legislation adds two circumstances to Tenn. Code Ann. § 39-13-502 that would enhance a rape offense to aggravated rape—(1) if the rape was committed during the commission of an aggravated burglary or (2) if the rape was committed against more than one person in a single incident.
- Further, the proposed legislation changes the aided or abetted circumstance currently under Tenn. Code Ann. § 39-13-502(a)(3) above to remove the additional requirements—i.e., that force or coercion be used, or that the victim was mentally defective.
- The proposed legislation would enhance a rape offense to aggravated rape if the defendant was aided or abetted by one or more persons. Further, the proposed legislation includes the circumstances that the defendant knows or has reason to know the victim is mentally defective, mentally incapacitated, or physically helpless as a stand-alone circumstance. In other words, if a defendant commits a rape against a mentally defective, mentally incapacitated, or physically helpless victim, then the offense would be enhanced to aggravated rape whether or not the defendant was aided or abetted by one or more persons.
- Statistics from the DOC show an average of 47.2 admissions per year over the last 10 years for rape. It is assumed that 10 percent, or 5 admissions ($47.2 \times 0.1 = 4.72$), of these admissions will be enhanced under the proposed legislation.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one ($5 \times .1178$) additional admissions for a total of six ($5 + 1$).

- Statistics from the DOC show the average time served for rape is 10.78 years and the average time served for aggravated rape is 18.92 years. The proposed legislation will result in each offender serving an additional 8.14 years (18.92 – 10.78).
- According to the DOC, 47.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (6 offenders x .471 = 2.826 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on three offenders (6 offenders – 3 recidivism discount) serving an additional 8.14 years (2,973.14 days) at a cost of \$211,331 (\$71.08 x 2,973.14 days) per offender. The cost for three offenders is \$633,993 (\$211,331 x 3).
- The total increase in state incarceration costs is \$809,236 (\$175,243 + \$633,993).
- The proposed legislation will not create any new cases for the courts, public defenders, or district attorneys. Any impact to their operations can be accommodated within existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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